

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
BOY SCOUTS OF AMERICA AND Case No. 20-10343 (LSS)
DELAWARE BSA, LLC,
Courtroom No. 2
824 North Market Street
Wilmington, Delaware 19801
Debtors. August 30, 2021
. 2:00 P.M.

TRANSCRIPT OF TELEPHONIC OMNIBUS HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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1 MATTERS GOING FORWARD:

2 1. Joint Letter to the Honorable Judge Laurie Silverstein from
3 the Official Committee of Tort Claimants, the Coalition of
4 Abused Scouts for Justice and the Future Claimants'
Representative Regarding Discovery (D.I. 6102, filed 8/20/21)

5 2. [SEALED] Hartford and Century's Motion for an Order (I)
6 Authorizing Certain Rule 2004 Discovery and (II) Granting
7 Leave from Local Rule 3007-1(f) to Permit the Filing of
Substantive Omnibus Objections (D.I. 1971, Filed 1/22/21)

8 **Ruling: 41**

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1 (Proceedings commence at 2:04 p.m.)

2 THE COURT: Good afternoon, counsel. This is Judge
3 Silverstein. We're here in Boy Scouts of America, Bankruptcy
4 Case No. 20-10343, for some discovery issues.

5 I will turn it over to the debtor to start with;
6 although, this was initiated by a request, a joint request,
7 from the official committee of tort claimants, the coalition
8 and the FCR.

9 MR. REMMING: Good afternoon, Your Honor. Andrew
10 Remming, Morris Nichols. Its good to see you.

11 THE COURT: Good afternoon.

12 MR. REMMING: Good afternoon. You are correct, we
13 are here today for a handful of discovery matters that were
14 not initiated by the debtor. Before we dive into those, with
15 the court's permission, I will turn it over to Jessica Lauria
16 for some opening remarks.

17 THE COURT: Ms. Lauria?

18 MS. LAURIA: Thank you, Your Honor. Jessica
19 Lauria, White & Case, for BSA.

20 I will be very brief, Your Honor. We just thought
21 it would make sense to give you a status update before today's
22 proceedings commence. We thank you very much for the prompt
23 ruling with respect to the RSA. The parties have been
24 digesting that. You will undoubtedly have noticed that we
25 have not filed any amendments to the RSA, nor have we

1 requested that the court enter an order approving the RSA with
2 the two modifications that were noted in Your Honor's ruling.
3 That, quite frankly, Your Honor, is because as you noted in
4 your ruling the transaction contemplated by the RSA and the
5 April Hartford settlement are mutually exclusive.

6 Hartford asserted, in its papers in connection with
7 the RSA, that it may have a sizeable administrative expense
8 priority claim and while the debtors and other parties, as I
9 understand it, dispute that we have to take that assertion
10 seriously particularly because to the extent Hartford were to
11 have an administrative priority claim that would sit in front
12 of all of our general unsecured creditors, both abuse
13 survivors and non-abuse general unsecured creditors.

14 So we are evaluating right now, Your Honor, the
15 best approach in light of Your Honor's ruling and in light of
16 what may need to occur procedurally on the Hartford fronts.
17 We will get back to you, I think, in the next couple of days,
18 but just wanted to make sure that we address the fact that we
19 understand we haven't come back to the court for the RSA
20 order.

21 All of that being said, Your Honor, we have
22 continued to have mediation sessions including in-person
23 mediation sessions and have had some very productive sessions
24 with insurers, with chartered organizations and with
25 representatives for survivor constituencies. So we are

1 cautiously optimistic that in the next couple of days we will
2 be back, at least, on the docket with some news to report.

3 That is all have for today, Your Honor. Unless you
4 have any questions I would hand the podium back over to Mr.
5 Remming to get the agenda started.

6 THE COURT: Thank you. No, I don't have any
7 questions. I appreciate the update.

8 MR. REMMING: Thank you, Your Honor. Again, for
9 the record, Andrew Remming, Morris Nichols Arsht & Tunnell,
10 for the debtors.

11 The first item that we listed on the agenda was
12 filed by the TCC, the coalition and the FCR. I don't know if
13 Your Honor had a preference for where we start, but that is
14 the first item on the agenda that letter.

15 THE COURT: That's fine.

16 MR. PASICH: Your Honor, this is Kirk Pasich for
17 the official committee of tort claimants. If I may, I think
18 the starting point for this discussion about our discovery is
19 to focus on, really, the purpose of it and what we are
20 seeking, and why we are before you.

21 As Century made clear in its last letter to the
22 court this goes back to a 1996 transaction by which INA's
23 assets reportedly were transferred to Century and its
24 liabilities. And as a result Century is the one that is here;
25 although, INA issued the policies.

1 Now the INA policies at issue commenced in or about
2 1951 and on through most of the life span of the Boy Scouts.
3 One thing that makes these policies different from policies
4 typically issued today is that most of them have no aggregate
5 limits. The policies in the 50's, 60's and 70's the chunk of
6 those have no aggregate limits meaning that they are uncapped.
7 As long as there is an occurrence that triggers coverage in
8 the policy period they have to respond to their limits.

9 Now I am sure that Your Honor is aware of the TDP
10 that has been discussed. It has been the subject of some
11 debate, but if we assume for a moment that the values that are
12 set forth in the TDP were accurate, and I'm not speaking out
13 about allegations of fraud or those sorts of things, that is a
14 separate issue, but if we were to look at the majors of
15 liability and the TDP, and we were to evaluate the INA
16 policies, and we were to make various conservative assumptions
17 in favor of INA, and by conservative assumptions I mean, for
18 example, we assume that each survivor constitutes a single
19 occurrence even though the law in a number of states would say
20 each abuse is an occurrence. And when you have a policy that
21 applies per occurrences, obviously, that is materially
22 important factors to calculate the number of occurrences.

23 If we gave the INA and Century the benefit of that
24 doubt, and we took the narrow, sort of, trigger theories, by
25 which I mean what policies apply, so we said it's only the

1 first year of abuse, it is not each year of abuse, it is not
2 the duration that entries are suffered, and we're aware of
3 medical evidence that injuries continue like post- traumatic
4 stress syndrome they can continue for decades after an episode
5 of abuse.

6 If we ignore all of that and we give Century and
7 INA the benefit of the doubt, and we look at the number of
8 survivor claims where the first abuse was in their policy
9 period you're looking at almost 16,000 claims. And if you
10 take values that are tiered based on the level of abuse, the
11 severity of abuse, you would value those claims as being
12 somewhere between just under \$6 billion to a total value in
13 excess of \$22 billion.

14 Now we're not saying that Century should pay that
15 because if you take into account the years of the Century
16 policies and give them the benefit of the doubt on the number
17 of occurrences, and do those other things you come up with a
18 potential liability range of about \$4.4 billion to about \$11.6
19 billion for those INA policies.

20 So we have been hearing claims of poverty. We know
21 that Century is in run-off. We know that this transaction
22 that went back to 1996 basically attempted to separate Century
23 from INA. So if that transaction were legitimate and it stood
24 up there would be one key question for this court and for us
25 to evaluate in assessing what is the right contribution from

1 Century to any settlement, what can Century pay.

2 Now to do that we have to look at Century's
3 financial condition and we posed one very simple interrogatory
4 to Century that asked identify the maximum amount that Century
5 can pay for any Century settlement. Pretty straight forward
6 question. They are the ones that know their financial
7 condition. They are the ones that know the reserve. They are
8 the ones that know what the agreements are with INA and Chubb
9 because let's be clear: under the plan that was approved in
10 Pennsylvania in 1996 and amended thereafter there is an
11 evergreen cash-flow that comes down from INA Financial, which
12 is a Chubb Company, into Century and that cash-flow is based
13 on dividends that are paid to INA Financial by Chubb. They
14 require that a minimum of 10 percent of those dividends be set
15 aside to be available to fund Century's obligations to its
16 policy holders.

17 So we know there is an evergreen fund. We know
18 that in the last 10 to 15 years literally hundreds of millions
19 of dollars has been placed into Century from Chubb. We know
20 that from Chubb's own financial statements and there is no
21 dispute about that. So when we look at Century and we ask
22 that interrogatory we're asking for Century to tell us, hey,
23 how much can you pay for these liabilities? Century's
24 response boiled down to its simplest point after going through
25 pages of objections is we will meet and confer with you.

1 So we asked Century to produce documents that
2 reflected its financial condition and eventually it produced
3 six boxes of documents that showed up at our offices in Los
4 Angeles, no cover sheet. To some extent about half of them
5 were documents in the public record that we already have
6 access to and the other half largely consisted of
7 communications back and forth among the parties in this
8 proceeding including the discover we propounded on Century.

9 So we saw nothing new that wasn't available in the
10 public record. So, for example, we don't know what the
11 reserves are that Century has set aside for the Boy Scout
12 claims. We don't know if Century increased those reserves as
13 we believe they were obligated to do as the claims mounted.
14 We don't know how much is available in these various funding
15 mechanisms to Century that come down from Chubb. We don't
16 know any of that.

17 So one piece of information that we're really
18 looking for is Chubb or Century to explain to us, to show us
19 what it is capable of paying. Now we're not willing to take
20 Century's word on that, nor do we actually have a statement
21 from Century to us as to what it financially is capable of
22 paying to resolve these claims.

23 So when it comes down to evaluating the plan, when
24 it comes down to assessing settlement, all of those features,
25 we don't know what Century can pay. We do know there is a

1 Chubb backstop. We do know from Chubb's annual reports filed
2 earlier this year that Chubb is having a good year and it had
3 a good year last year, pandemic notwithstanding. We do know
4 that Chubb seems to believe that Century is going to be around
5 for quite some time and expects it to be around for quite some
6 time. So we are not sure how to balance that with what
7 appears to be a claim that Century has an inability to pay a
8 substantial amount of money.

9 So at the simplest point on this half of the issue
10 we simply want Century to show us some documents that tell us
11 what it really is able to pay on these transactions; these
12 settlements, these claims. Now we are not asking Century to
13 say what it is prepared to pay or --

14 THE COURT: Well let me ask you, I just want to
15 make sure I understand, what theory is it based on, this
16 request -- that wasn't English. What is the basis of this
17 request that you could ask an opposing party what they're
18 capable of paying? What rule does that come from? What
19 theory is that based on? I am not sure I understand.

20 I understand why you want the information. I am
21 trying to understand why you are entitled to it.

22 MR. PASICH: Well, Your Honor, I think when we're
23 looking at evaluating assets of the estate, which is one of
24 the things we're looking at here, and, obviously, a key asset
25 of the estate is these INA policies and the value of those

1 policies, and we're assessing that in the context of a
2 proposed plan. There are proceedings that were stayed,
3 obviously, between the BSA and Century, among others, and
4 there was a proceeding initiated, an adversary proceeding,
5 here that has also been stayed.

6 So we're trying to do this to accommodate the BSA's
7 desire to get a plan in place as soon as it reasonably can.
8 We have heard what they have said about that. We know there
9 is ongoing settlement discussions. We know there's offers
10 made, some of which we are aware of and some of which the TCC
11 is not aware of. But as a representative of 84,000 abuse
12 survivors we clearly have a stake in this game.

13 So from a practical perspective we are saying show
14 us what you can pay. You want us to believe you can pay a
15 certain amount of money and only that amount of money, so show
16 us what you can pay. From a bankruptcy perspective you're
17 right, we are requesting certain information that we have done
18 in the form of interrogatories and production requests. I am
19 aware of what Century said in its response letter where it
20 disagrees with our legal ability to get them which is why I
21 say we're looking at it from a practical perspective and a
22 legal perspective.

23 We do have a claim, as the claimants, in the value
24 of these policies. These policies, like all insurance
25 policies, were set aside and designed to protect claimants,

1 not just the insured. That is one of the purposes behind
2 insurance. We do have in certain states some of our claimants
3 have the ability to make direct actions against Century and
4 pursuant to those rights they could assert claims for this
5 information from Century.

6 So I think we're looking at a combination of things
7 here that are at play, but I do think it's true; if this court
8 were to say and Century were to say we have no ability to
9 force Century to produce this information then we don't get
10 this information and then we don't have a basis because we
11 will continue to object to the plan unless Century is --

12 THE COURT: But that is not the case. In fact, the
13 RSA, and granted nobody has put that order in front of me, but
14 under the RSA the committee has signed off on the structure of
15 the plan. And the plan, as I understand it, at the moment
16 does not have a settlement to evaluate with Century. So to
17 say that you can't support a plan that's not true. In fact,
18 it's not the situation here. In fact, the committee has
19 supported a plan and had I not ruled the way I did you would
20 have been there. So I don't understand that position.

21 MR. PASICH: Let me see if I can explain it, Your
22 Honor, because your absolutely correct in terms of the TCC
23 supporting the RSA and signing under the RSA; no disagreement
24 there. Whether that RSA takes effect or not I don't know.
25 Whether there is a plan that contemplates the RSA taking

1 effect that I can't tell you either.

2 We understand that the Boy Scouts are contemplating
3 filing a plan in the immediate future, but if the RSA doesn't
4 stand there is no approved plan. If the RSA does stand you
5 are right, there isn't a settlement here that involves Century
6 per say, it goes off into the land where the trust is there
7 and then there's litigation and maybe were done.

8 I am trying to look at this from a practical
9 perspective whereas the BSA has represented to you there are
10 ongoing mediation sessions and we understand, although we're
11 not a party to certain of these settlement discussions, that
12 they're ongoing settlement discussions involving various
13 insurers who we suppose would include Century, but we don't
14 know that. So --

15 THE COURT: So do you want me to give the TCC and
16 advantage during mediation, is that what this is about? I am
17 trying to, again, figure the legal basis. I understand you
18 are coming from a practical perspective and from a practical
19 perspective we all love to have information from our
20 adversaries about all kinds of issues, but that is not the
21 standard.

22 So what I am hearing is inconsistent with where we
23 were in this case, at least, two weeks ago and it seems like
24 it's geared toward trying to get some advantage in the
25 mediation.

1 MR. PASICH: Well, Your Honor, look, we left some
2 advantage in the mediation I suppose that's true, but what we
3 would really like to do is we don't want to be unreasonable
4 here in our responses to attempts to resolve BSA's liability
5 and to get a plan in place.

6 So what we do know is when we look at something
7 like Century, and INA and Chubb, and we look at their
8 financial statements and they tell us how much money they have
9 -- I mean if you're dealing with a company at the Chubb level
10 that made three and a half billion in net profit last year
11 alone, and we're evaluating this what I would say to Century
12 is if you really can't pay show us because we don't want to
13 make a demand that is unreasonable that has no chance of
14 working. We want to make a reasonable demand based on ability
15 to pay and based on a transaction that still gives policy
16 holders the right to raise challenges to that transaction that
17 would theoretically isolate INA and Chubb from any financial
18 liability for Century.

19 So that is our position. It's not to gain an
20 advantage. It's trying to be reasonable here to work towards
21 a resolution that benefits everybody. We do not want to make
22 a demand for \$8 billion if there's no chance that that is a
23 reasonable number in light of Century's ability to pay, and
24 whatever INA and Chubb's obligations may or may not be to
25 backstop financial obligations that Century has. That is

1 really the thrust of this; not to gain an advantage at
2 mediation, but to be reasonable.

3 THE COURT: Well the latter issue is a legal issue,
4 right? The latter issue is what is the consequence or not of
5 that divisive transaction that happened in 1990 whatever. So
6 that is a legal issue. I understand that. That is not going
7 to get litigated in front of me.

8 So that is an assessment that parties will have to
9 make based on their own review of the cases, and what has
10 happened, and maybe what has happened in other circumstances
11 where someone has used this Pennsylvania statute before, and
12 the effect of an insurance commissioner's decision, etc. That
13 is a legal issue.

14 MR. PASICH: That is a legal issue, Your Honor, and
15 I don't disagree with it. Also it plays an important issue
16 here with respect to -- and this is where this ties into
17 Hartford. And I know you haven't made a decision on Hartford,
18 and I'm not asking you to do any such thing today. That is
19 way beyond my purview to ask you to do that today, but because
20 of the linkage between the Hartford settlement and Century in
21 evaluating all of this, looking at the challenges, Century's
22 ability to pay does become important.

23 One of the assets the Boy Scouts has under the
24 Pennsylvania Insurance Department's approval, under the
25 Pennsylvania Supreme Court's decision on that approval and

1 under the California Court of Appeals approval of that
2 decision there was an important carve-out here and that carve-
3 out was for policy holders. The department in those two
4 courts recognized that a policy holder does have a right to
5 challenge the transaction. That policy holder would be the
6 BSA.

7 So if there is a release to be had here of anything
8 involving Century it will be important to evaluate the value
9 of that right that the BSA has to go beyond whatever Century's
10 financial ability to pay is. Now if it turns out Century has
11 a sufficient financial ability to pay we may never have to
12 reach that issue, but if it doesn't we do reach that issue and
13 we know the transaction involved.

14 One of the ironies here is the transaction
15 challenge that was made in California was made by AIG and a
16 Chubb Company. They challenged the transaction, they accused
17 the transaction of being fraudulent. Now Chubb's tone has
18 changed because when INA bought Chubb then all of a sudden it
19 was in a different position because now the transaction that
20 Chubb was challenging Chubb was now a party to that
21 transaction.

22 We do know they mounted a challenge. We do know
23 the California Court of Appeals recognized that challenge and
24 we do know one other thing that the California Court of
25 Appeals said that is relevant for our discussion today. The

1 California Court of Appeals said that when INA and Century
2 wrote to their policy holders and they sent out letters
3 describing the transaction those letters didn't cut it. They
4 didn't do what they were supposed to do to give fair notice to
5 the policy holders and, to use the words of the court, those
6 letters could be characterized as fraudulent.

7 Now that was a result that Chubb obtained. That
8 result stayed on the books. And the only reason that case
9 didn't go any farther was the voters in California passed an
10 initiative that changed the loss of -- the only people that
11 could mount that kind of challenge would be a policy holder,
12 not a competitor. Well one thing that would be easy to do
13 here, from our perspective, to look at the validity of that
14 transaction, would be to say to Chubb, to Century, to INA,
15 look, the court told you, you needed to do a different letter.

16 So in the early 2000's did you, in fact, send the
17 required letter to the Boy Scouts of America making the
18 adequate and accurate disclosure that you were required to
19 make because if you did that that changes the tenor of the
20 discussion today. If you didn't do it then all we have is a
21 court of appeal decision that's final, that Chubb obtained
22 that said the disclosure wasn't adequate and characterized the
23 disclosures as fraudulent. That goes to the value of the
24 estate and it goes to the value of the BSA's rights to go
25 beyond Century and to get to INA.

1 That is why I said at the start, Your Honor, that
2 we have two pieces we are looking at here. One is Century's
3 ability to pay and the other is, is INA obligated today,
4 notwithstanding that transaction, on the billions of dollars
5 of insurance that it provided to the BSA. That is the
6 information we are requesting. There could be a simple answer
7 to the latter, here is a letter that we can show you that was
8 sent to the BSA, and on the former there would be an answer on
9 what their financial ability to pay is.

10 THE COURT: My guess is that letter wouldn't end
11 everything, but I guess here I'm still trying to figure out
12 the context. The context we're in right now where you are
13 trying to get this information. Perhaps there is another
14 context where it would be permissible, but the context we're
15 in right now is where I'm having some issue.

16 What is it related to? What is the hook for it?
17 What is in front of me in a contested way that would permit
18 the TCC to obtain this information and that is where I still
19 haven't heard that hook, if you will. How is it in front of
20 me -- how is properly in front of me in the context of where
21 we are right now which is nothing in the plan, as I understand
22 it, the latest plan that has been put in front of me, as I
23 understand it, or nothing in the RSA gives a release to
24 Century, gives a release to Chubb, gives a release to anybody
25 who was a part of that transaction. So those claims will all

1 still exist even if I confirm a plan, at least, any of the
2 plans that have to date been put in front of me.

3 MR. PASICH: Your Honor, perhaps I can try it this
4 way and offer two thoughts. Number one, the RSA isn't going
5 to be operative in the current state. So that wouldn't be the
6 governing document. Number two, I think if we look at the
7 disclosure statements the TCC along with pretty much a bunch
8 of other folks, I think, a large number of firms have checked
9 into the disclosure statements, the statements provide
10 sufficient information.

11 So in order for the claimants to evaluate the
12 insurers' exposure and what they can pay this is information
13 that goes to that exact point. So I don't think we can look
14 at the RSA at this point and I do think we look at the
15 disclosure statement and I do think we look at what objections
16 are likely to be filed to any plan that comes up. To me those
17 things are the basis for this court to say the information
18 we're requesting should be produced.

19 THE COURT: Okay. Thank you.

20 MR. LUCAS: Your Honor, this is John Lucas for the
21 TCC. May I add just a couple of comments?

22 THE COURT: No. You're the same party. No. One
23 person. Thank you.

24 MR. LUCAS: Thank you, Your Honor.

25 MR. GOODMAN: Your Honor?

1 THE COURT: There were two other signatories to the
2 letter. Does the FCR or the coalition have anything to add?

3 MR. GOODMAN: Your Honor, this is Eric Goodman.
4 Can you hear me okay?

5 THE COURT: Yes, Mr. Goodman.

6 MR. GOODMAN: Thank you. Good afternoon, Your
7 Honor. Eric Goodman, Brown Rudnick, counsel for the
8 coalition.

9 In the interest of full disclosure I am not an
10 insurance attorney. I am a bankruptcy attorney, former
11 bankruptcy clerk. I wake up in the morning and I only think
12 about Section 1129 when it comes to these issues. The
13 bankruptcy code to me is kind of the beginning and the end of
14 the day.

15 The discovery that we are seeking is critical for a
16 bankruptcy reason and it's critical for a bankruptcy reason
17 that is completely independent of the Hartford settlement.
18 This is a plan confirmation issue. There are several
19 directions this case could go in; the information that we are
20 seeking and have been seeking for some time from Century and
21 Chubb is relevant no matter which path we travel.

22 The debtors could file another plan. In fact, I
23 expect that they will file another plan. There are ways that
24 this case could go. The first is, and I hope this is the
25 case, that the debtors plan is accepted, after the vote, by

1 the survivors and other creditors in this case. If that is,
2 in fact, what happens we will see litigation over the
3 channeling injunction and the non-consensual releases that are
4 contained in the plan.

5 Under the Master Mortgage factors and this court's
6 own decision in Millennium a fair question will be whether the
7 survivors are receiving a substantial recovery. What the INA
8 insurance rights are worth bear on that question. The INA
9 insurance rights may be worth billions, as you just heard from
10 Mr. Pasich, or they may be worth substantially less than that.
11 Right now we don't know. It depends on what Century can
12 afford to pay and who is liable under the INA policies. That
13 is why we need discovery.

14 The second path, and I hope this doesn't happen,
15 but it could, is the debtors plan would be voted down. The
16 debtors could then ask the court to confirm the toggle plan
17 and that would put us before Section 1129(b), unfair
18 discrimination, and Section 1129(a)(7), best interest of
19 creditors. Those statutes would then be front and center.

20 Both of those tests concern themselves with the
21 assets being set aside to pay dissenting creditors. The value
22 of the INA insurance rights would be critical to that
23 analysis. Absent the settlement with Century there is no path
24 out of this case that doesn't not involve the value of the INA
25 policies. That is the relevancy of the information we are

1 seeking.

2 THE COURT: Isn't that -- aren't the value of the
3 policies the same regardless of whether this is a 7 or an 11?
4 How is that -- I don't understand that argument and maybe I
5 don't need to for today, but I don't understand that argument.
6 The value of the policies, the litigation, the claims against
7 Century, Chubb and INA, unless there is a settlement of them
8 how is -- how does it matter for the best interest of
9 creditors test. They are the same.

10 MR. GOODMAN: So two points, Your Honor, and I
11 anticipated this question. So on the best interest of
12 creditors test, and I don't know that I want to go too far
13 into the weeds on this issue, but it depends on the Fuller
14 Austin in the trust distribution procedures. To make the
15 answer, I think, even more clear recall under the plan, the
16 debtors plan, under both the toggle and the global resolution
17 plan the general unsecured creditors are receiving recovery
18 close to 95 percent.

19 In a cram-down situation, again the insurance
20 rights from the Boy Scouts would be contributed to the trust,
21 you would need to know the value of those assets, among other
22 things, to know if the plan was unconfirmable on the grounds
23 that it was unfairly discriminatory. So even if you, sort of,
24 put aside the --

25 THE COURT: Vis-à-vis who? Vis-à-vis who? Oh, the

1 general unsecureds?

2 MR. GOODMAN: Yes.

3 THE COURT: Maybe. Okay. Maybe.

4 MR. GOODMAN: There are a number of creditors in
5 this case who are receiving close to 100 percent payment under
6 the plan. You would have a situation where the general
7 unsecured creditors would be in the 75 to 95 percent range, I
8 believe this is according to the debtors' disclosure
9 statement. You would be in a situation where the survivors, I
10 think, would be in the 1 to 3 percent range. Again, the asset
11 values in the settlement trust would turn, in part, upon the
12 value of the INA policy rights that would be assigned.

13 So that is the issue that you would run into if you
14 were in the cram-down world. And, again, I hope that we are
15 not in the cram-down world, but we could be. So, again, the
16 discovery that we served on Century and Chubb it was served in
17 connection with the debtors plan in the disclosure statement.
18 The INA insurance rights from our perspective are the crown
19 jewels in this case, potentially the most valuable assets that
20 the debtors have, or it could be a lump of coal, the least
21 valuable assets.

22 In terms of the coverage obligations and exposure
23 Chubb is a major player in this case and we need to know if
24 the amount owed by Century or Chubb are impaired. I think of
25 it in just basic GAAP accounting terms. If the Century

1 receivable is impaired because the obligor is insolvent then
2 you have to write it down and we don't want to be in a
3 position where we discover at plan confirmation that the INA
4 policies are impaired.

5 I would say that this is also a disclosure issue
6 almost as much as a plan confirmation issue. The disclosure
7 statement in its current form contains a range of potential
8 recoveries for survivors. If the INA insurance rights are
9 significantly impaired those estimates may be incorrect. It's
10 a foundation question. Every plan that has been proposed has
11 the INA insurance rights going to the settlement trust.

12 If the disclosure statement is going to provide
13 estimates regarding potential ranges of recovery for survivors
14 we need to have a sense of what those assets are worth or, at
15 least, have a ball park -- know what even ball park we're in
16 and right now we don't know what ball park Century and Chubb
17 are in because they won't give us the information we have been
18 requesting for months and months.

19 We have been facing an iron curtain of secrecy
20 which is extremely frustrating given that we're in a Chapter
21 11 proceeding that is supposed to involve transparency. And I
22 would also add, from a discovery standpoint, these really
23 should be readily identifiable documents. We don't want a
24 million emails. Century and Chubb should be able to produce
25 this information in a matter of days and in electronic format

1 rather than boxes of documents. To be clear --

2 THE COURT: Well they have what they have and since
3 it dates back it might not be in electronic form, but I
4 actually don't even have the discovery in front of me. Nobody
5 has put it in front of me. It wasn't attached to the letters.
6 So I don't have it.

7 MR. GOODMAN: I believe the discovery requests were
8 attached to the letters, Your Honor.

9 THE COURT: Not the letters I am seeing.

10 MR. GOODMAN: I can provide the court with that
11 docket entry later on, but I know that we did file the first
12 letter and they were attached. We are happy to provide that
13 information, Your Honor.

14 You know, to be clear, the information that we want
15 and need has not been produced. Our requests are not moot.
16 If anything I think they're more critical now than they were
17 back in April. Again, it's not just a Hartford settlement
18 issue although, obviously, the Hartford issue is important,
19 but this issue really predates the Hartford settlement. The
20 Hartford settlement put a highlighter on this one, but it's
21 something that has been on our minds from a bankruptcy
22 standpoint for a very long time.

23 The last point, Your Honor, I just want to note
24 that we don't really have this issue with respect to any other
25 insurer in this case. This is really a unique issue when it

1 comes to Century and Chubb and with this point. The court may
2 have recalled or heard at the last hearing Mr. Stang said
3 something that I think does bear repeating here; Century has
4 said that it does not -- I'm sorry, I'm quoting from the
5 transcript from Mr. Stang,

6 "Century has said that it doesn't have the ability
7 to pay what we believe is a fair settlement."

8 You know, that sort of brings front and center
9 these issues and it brings it front and center from my
10 standpoint from just purely bankruptcy reasons.

11 THE COURT: Thank you.

12 MR. GOODMAN: I don't have anything further, Your
13 Honor.

14 THE COURT: Thank you, Mr. Goodman.

15 Does the FCR have anything to add?

16 MR. BRADY: Your Honor, Robert Brady for the FCR.
17 No, we would adopt the arguments of counsel for the TCC and
18 the coalition.

19 THE COURT: Thank you. Okay. Let me hear from
20 Century and whoever else is going to respond.

21 MR. SHAMAH: Thank you, Your Honor. Daniel Shamah,
22 O'Melveny & Myers, on behalf of Century.

23 Can you hear me okay, Judge?

24 THE COURT: I can.

25 MR. SHAMAH: Thank you.

1 And, Your Honor, with me is Mary Beth Forshaw from
2 Simpson Thatcher. She's counsel to Chubb in this matter.

3 And I'm quite glad she's on the line, Judge --
4 she's going to follow me -- but I'm glad she's on the line,
5 because she's an insurance lawyer, and 95 percent of what I
6 just heard was just a coverage argument and not a bankruptcy
7 argument, other than a couple points Mr. Goodman made. And,
8 candidly, I'm not an insurance lawyer, but I heard a lot about
9 reserves and old transactions, none of which is before you.

10 With respect to the bankruptcy points that were
11 made, I'll be very brief because I think, Your Honor, you're
12 right on in terms of the somewhat odd circumstances that we
13 find ourselves in, because contextually, everything I've heard
14 were either things that haven't happened yet or things that
15 are old and stale.

16 So, we heard about, if there's a Century release
17 and if there's a Century settlement and if there's a plan and
18 maybe it's a cram-down plan and maybe it's not a cram-down
19 plan. None of that is before you. None of that has been teed
20 up for your approval. None of that is, you know, you have no
21 context with which to evaluate any of this if we're talking
22 about hypothetical deals and hypothetical plans that have yet
23 to be filed in the future.

24 We've also heard a little bit today about toggle
25 plans that have been superceded and nobody is going forward

1 with those as we sit here today and a Hartford settlement that
2 the debtors have repudiated, and Ms. Lauria said expressly at
3 the front end, is very much in flux and is mutually exclusive
4 with the deal that's on the table.

5 So, in terms of the context of the bankruptcy, from
6 what I can glean from the letters -- and I don't believe, Mr.
7 Goodman, any of the discovery requests were submitted -- but
8 setting that aside, from what I can glean from the letters,
9 there are three bankruptcy-related arguments that they're
10 making.

11 The first is the Hartford settlement, which I think
12 Your Honor knows is very much in flux; it's tied to one
13 particular provision of that agreement, the most-favored
14 nations provision that affects how much Hartford may pay,
15 depending on what maybe Century would pay in a hypothetical
16 settlement that's not before Your Honor. I view this as a
17 replay of the evidentiary arguments that we had at the RSA
18 hearing. We're not a party to that agreement. We didn't
19 negotiate anything with that agreement, as all. I don't see
20 how discovery of Century, in connection with the settlement
21 agreement that is not up for Your Honor's approval in any way,
22 is appropriate.

23 The second is they didn't mention it, so perhaps
24 they've abandoned it, is the estimation motion. Your Honor,
25 that motion is fully briefed, so I don't see how discovery in

1 connection with the estimation motion makes any sense, and in
2 any event, Your Honor, that concerns the debtors' liabilities,
3 nothing to do with Century and Chubb and INA and any of these
4 other parties.

5 And so that brings us, I think, Your Honor, to the
6 main argument, which is somehow plan confirmation. And I
7 don't think they can put the toothpaste back in the tube, that
8 they supported the plan that's currently on file. They
9 withdrew their objections to the disclosure statement, in
10 connection with the signing of the RSA. And so all of these
11 arguments from Mr. Pasich and Mr. Goodman about needing to
12 evaluate the disclosure statement and assess the
13 confirmability of the plan, frankly, are disingenuous.

14 This is all about getting a leg up in the mediation
15 to the negotiations. It has nothing to do with the plan that
16 is in front of Your Honor.

17 They signed this RSA knowing that there were
18 potentially issues around Century, given the 1996 transaction.
19 They accepted that. That was part of the deal. They did not
20 condition anything in the RSA on a settlement with Century.

21 Now, Ms. Forshaw is going to talk a little bit more
22 about the 1996 transaction and she's also going to talk a
23 little bit about what we produced and how, you know, candidly,
24 it satisfies entirely questions that they have actually asked
25 both, us in conversations as well as questions they've raised

1 today at the hearing.

2 But with respect to confirmation, I thought it was
3 telling and interesting that they didn't cite one single case
4 in any of their letters, indicating at all that this is at all
5 relevant to confirmation. The policies are what they are.
6 The 1996 is what it is. It has a legal effect that may be
7 litigated at some point down the line. Maybe it won't be. We
8 don't know.

9 But whether the Court confirms the plan is entirely
10 a separate matter completely.

11 They talked about potential recoveries of
12 claimants. Recoveries of claimants are contingent on a host
13 of factors. There's something like 20 to 30 pages of risk
14 disclosures in the disclosure statement, many of which relate
15 to insurance-coverage issues. It also relates to the amounts
16 of claims that ultimately be allowed. It also relates to the
17 expenses of the trust. There are innumerable consideration
18 that can go into claimant recoveries. That does not open the
19 door to discovery that -- into transactions that are 25 years
20 old.

21 And lastly, Your Honor, I do want to point out the
22 timing of a lot of this. This is old and stale discovery.
23 This was served back in April, two plans and a Hartford
24 settlement ago. You know, the circumstances have obviously
25 significantly changes in the intervening time period. They

1 have raised these issues during mediation, expressly for the
2 purpose of getting an advantage in mediation.

3 I think Your Honor's instinct was exactly right
4 during the opening colloquy. This is about getting additional
5 information. If we can reach a settlement, that's great;
6 nobody would be happier, obviously. But it's not appropriate
7 to use discovery and, particularly, tee these issues up before
8 Your Honor at particularly sensitive junctures in this case,
9 during the RSA hearing and immediately thereafter, simply to
10 gain an advantage.

11 And with that, Your Honor, unless you have
12 questions on the bankruptcy side, I was going to turn it over
13 to Ms. Forshaw, as Chubb's counsel to address the 1996
14 transaction.

15 THE COURT: No, I don't have any questions.

16 MR. SHAMAH: Thank you, Your Honor.

17 THE COURT: Ms. Forshaw?

18 Thank you.

19 MS. FORSHAW: Can you hear me, Your Honor?

20 THE COURT: Yes.

21 MS. FORSHAW: Great.

22 Mary Beth Forshaw from Simpson Thatcher, for Chubb
23 Group Holdings. Combined, Your Honor, the claimants served
24 Century and its five-step removed affiliate, Chubb Group
25 Holdings, with 84 requests for production of documents, 13

1 interrogatories, and 11 requests for admission.

2 These discovery requests largely related to yet-to-
3 be-decided coverage issues, including which insurer would have
4 to pay the unadjudicated coverage to the Boy Scouts, in light
5 of a 1996 restructuring that you heard about from Mr.
6 Pasich. Century and Chubb objected to the request (audio
7 interference) to anything that was pending before the Court
8 and also expressing concern about the burdens associated with
9 collecting documents that date back to 1996.

10 Despite these well-founded objections, Chubb and
11 Century, nevertheless, produced eight boxes of documents. The
12 documents that were produced including 10 years' worth of
13 financial statements relating to Chubb, a 330-page, detailed
14 annual statement of Century as of 12-30-2020, that was filed
15 with its regulator, the Pennsylvania Department of Insurance,
16 the eight approval orders, relating to the 1996 transaction,
17 and various disclosures relating to the 1996 transaction that
18 describe what happened in 1996.

19 Claimants' letters are a little bit different than
20 some of the things they expressed today, but what they
21 basically say is, that's not enough. We need more information
22 about the financial condition of Century and Chubb, and,
23 second, we want additional documents relating to the approval
24 of the transaction in 1996 and the documentation that the
25 parties signed 25 years ago.

1 These requests should be denied (audio
2 interference), frankly, because the claimants have already
3 been provided with sufficient information to answer their
4 questions about the financial wherewithal of Century and Chubb
5 and the 1996 restructuring.

6 They want to know whether Century has enough money
7 to pay under the insurance policies or pursuant to a
8 settlement enter into with the Boy Scouts, and if Century
9 doesn't have enough money, does Chubb have sufficient funds to
10 chip in. These issues have no connection to anything pending
11 before the Court, as my colleague from O'Melveny & Myers just
12 said, the disclosure statement indicates that the plan that's
13 on the table is based on an assumption that there might be no
14 or limited insurance recoveries.

15 And more to the point, the coverage obligations
16 under the Century policies are disputed. We firmly disagree
17 with the assertions that Mr. Pasich made about the potential
18 coverage available under the policies. He ignores the pending
19 coverage disputes between the parties. He ignores key
20 provisions of the agreements, the insurance agreements. He
21 ignores that there's a lot of case law that says per-person
22 and per-occurrence limits can be applied in this context, such
23 that Century (audio interference) here. That's an argument
24 that will likely be preserved for another day.

25 The coverage issues aren't adjudicated and aren't

1 going to be adjudicated in this court. Whether Century can or
2 can't meet its obligations for these unadjudicated liabilities
3 is not before you. And even more remote is the question as to
4 whether if Century can't meet its obligations for these
5 unadjudicated liabilities that will sorted out someday in the
6 future, whether Chubb or anybody else has to step in and pay
7 anything.

8 We cited in our letter to you, two cases that stand
9 for the proposition that discovery of about ability to pay is
10 generally disfavored. Federal Rule of Civil Procedure, Rule
11 26 says that such discovery, or it's been interpreted to say
12 that such discovery is inappropriate.

13 That basic rule should be applied with more force
14 here, where the question of insurer liability isn't even
15 before the Court. In any event, to go back to what I said at
16 the beginning, we don't even understand why they're even
17 bringing up this information or this request about our
18 financial wherewithal.

19 We produced 10 years of Chubb financial statements.
20 They have a 330-page financial statement of Century given to
21 its regulator. They don't need more. They should take the
22 time to read the documents they have and make whatever
23 assessment they want to make. They're certainly not entitled
24 to more.

25 To move quickly on to the restructuring

1 transaction, let me start by saying that as a preliminary
2 matter for the record, Chubb/Century categorically disagrees
3 that anything that happened in 1996 was inappropriate or
4 fraudulent in any way. We have provided you, Your Honor, with
5 a 65-page opinion approving the 1996 transaction. The 1996
6 transaction was the subject of a very public process, a three-
7 day hearing. It was approved by eight regulators. The 65-
8 page decision from the Pennsylvania Department of Insurance
9 notes that CCI, which merged with Century Indemnity Company,
10 was backed up by billions of dollars, upon the restructuring
11 being completed. It had experienced management staff. It
12 operated for the past 25 years, pursuant to the supervision of
13 the Pennsylvania Department of Insurance. It's filed
14 quarterly statements as to its activities over those 25 years.

15 The notion that anything, any steps taken by
16 Century or Chubb, since it's been part of Century and Chubb
17 have been associated, was inappropriate is just completely out
18 of bounds. Thousands of claims have been paid over the past
19 25 years.

20 For 25 years, Century has honored all of its
21 obligations (audio interference) for information about the
22 restructuring that occurred 25 years ago is a complete fishing
23 expedition. They say, for example, that we should produce the
24 exhibits referenced in the 65-page Pennsylvania Department of
25 Insurance decision. Well, those exhibits that are referenced,

1 just to be clear, were not attachments to the decision. Those
2 200-plus exhibits that are referenced were the hearing record,
3 the regulatory hearing record from that three-day hearing,
4 back to 1996.

5 Century doesn't have a copy of the March hearing
6 record dating back to 1996. The notion that the company
7 should be tasked with sorting through ancient documents and
8 trying to figure out which of them were exhibits that are
9 referenced in the Department of Insurance order is absurd. We
10 shouldn't be ordered to reconstruct the record.

11 Also, the idea that they need to see the record
12 underlying the 65-page decision actually makes no sense. The
13 decision says what it says, Your Honor. There's no
14 interpretive dispute pending before you or, frankly, anybody
15 else, about what that decision means. If there were such an
16 interpretive dispute, it wouldn't be pending in the Boy Scouts
17 bankruptcy action. There's no reason, no hook, no connection
18 why Your Honor should order Century to produce the exhibits or
19 try to reconstruct the exhibits.

20 The letters also say they want the transactional
21 documents from the original 1996 transaction and they say they
22 want those documents for two reasons. First, they want them
23 to, quote, figure out for themselves how policies were
24 allocated by operation of law in the restructuring.

25 Well, Your Honor, they have information that tells

1 them that; it's paragraphs 30 to 35 of the 65-page order that
2 we've given them. It details how policies were allocated by
3 operation of law. There's no need for us to produce
4 irrelevant transactional documents and, frankly, the idea that
5 the issue of, you know, who owes what under which policies, is
6 something that is pending before Your Honor is absurd; again,
7 that's an issue that someday will be sorted out in a coverage
8 dispute, but not a dispute before Your Honor and certainly not
9 one that's before us here today.

10 They also claim that they want to look at the
11 transactional documents to try to figure out if there was a
12 fraud or whether they have some ability to challenge the
13 restructuring. Again, this is a 25-year-old transaction. I
14 think they're going to be hard-pressed to find any basis to
15 challenge the 25-year-old transaction that resulted in the
16 operation of an insurance company that's been overseen closely
17 by the Department of Insurance for 25 years.

18 Even if they could comfortable together such a
19 claim, that claim, again, is a claim that would be part and
20 parcel or follow any coverage proceeding that took place and
21 certainly nothing that's going to be litigated before Your
22 Honor.

23 THE COURT: Let me ask you, Ms. Forshaw, I'm
24 looking at the 65-page opinion and there seems to be multiple
25 paragraphs that address INA policy holders --

1 MS. FORSHAW: Uh-huh.

2 THE COURT: -- in the 230s.

3 MS. FORSHAW: Paragraph 230s?

4 THE COURT: Yeah. And it starts, well, 232, 233
5 and on --

6 MS. FORSHAW: Uh-huh.

7 THE COURT: -- talk about the fact that INA policy
8 holders are not required to consent under Pennsylvania law to
9 what's happening, that they don't have approval power over
10 this, and that -- and approval of a plan of division does not
11 foreclose creditors, including policy holders, from pursuing
12 any remedy at law, which may be available to them.

13 Now, I take your point that this is 25 years old.
14 This divisive transaction happened a long time ago. Perhaps
15 Century has been meeting all of its obligations since that
16 point in time, and so nobody's had to go back after INA, but
17 I'm not -- I didn't read this whole thing in detail, but it
18 strikes me that there could be -- that nothing is precluded,
19 let's put it that way, that this approval by the Pennsylvania
20 Commission or Department of Insurance says, it doesn't
21 foreclose creditors from pursuing any remedy they may have at
22 law, what that remedy may be.

23 MS. FORSHAW: It says what it says, Your Honor.

24 Our view is it's too late. Well, we have a lot of
25 defenses to such claims. It's too late. There certainly is

1 no claim that is ripe at this point, since there is no
2 adjudicated liability owed to the Boy Scouts; that's another
3 problem with their argument.

4 I will tell you that Mr. Pasich cited the Ayco
5 case. I think he got the facts wrong. The Court of Appeals
6 did not make any sort of final finding; all it found is that a
7 bunch of insurance companies that challenged the transaction
8 had stated a claim that reversed a decision on a motion to
9 dismiss, sent the proceeding back. Ultimately, the Trial
10 Court in that case found that the claimants there had not met
11 their burden in establishing any sort of fraud in connection
12 with (audio interference) the plaintiffs there didn't actually
13 have any standing to challenge the restructuring.

14 Ultimately, shortly thereafter, another California
15 case came down and we cited it in our letter; it's called
16 Yarway. And Yarway found that, in fact, Century was the legal
17 successor to the liabilities of INA, in connection with the
18 allocation of policies that were undertaken in connection with
19 the restructuring transaction.

20 So, Your Honor, someday will we litigate with these
21 folks what that paragraph means in the 65-page order? Someday
22 will there be a dispute within the context of coverage as to
23 what is INA's role, what is Century's role?

24 Maybe. But that's not now. And they are not
25 entitled to, in our view, anymore discovery than they've

1 already received. We've been quite generous in what we've
2 given them to try to resolve these discovery requests, which
3 we thought were irrelevant and overbroad right from the start.
4 We've given them outlines of the restructuring. We've given
5 them financial information. We should not be called upon to
6 go back and sort of through old files and try to find
7 documents from 1996 and have to produce more.

8 These are side issues that have nothing to do, no
9 connection with anything before Your Honor, and we would ask
10 you to deny their request to receive further discovery. Thank
11 you.

12 THE COURT: Thank you.

13 Okay. Well, this discussion actually kind of
14 highlights one of the reasons I wanted to have a more general
15 discovery discussion today to try to figure out where we are
16 and how plan-related discovery is going to proceed and when it
17 might proceed.

18 As for this particular request at this time and in
19 the way it's been framed to me, I'm not going to require, at
20 this time, any further information to be produced by Century
21 and Chubb. It is untethered to any particular dispute that's
22 in front of me and it does seem to be motivated as, quite
23 frankly, candidly stated by counsel by just wanting to know
24 what Century, and perhaps Chubb, have an ability to pay
25 relevant to the mediation and settlement discussions, and I do

1 not consider that to be an appropriate basis upon which to
2 require adversaries to produce documents.

3 I don't have the document requests in front of me.
4 I don't think I missed them. I'll apologize in advance if I
5 did. But I don't have that in front of me.

6 There has been production made. Quite frankly, I
7 don't see how the record of the proceeding, to the extent it
8 exists in some forum, is all that relevant to legal issues
9 about the effect of the 1996 transaction and its implications,
10 upon which I make no comment.

11 So, I'm denying it at this time. Perhaps, it will
12 be appropriate at a future date -- I don't know -- in
13 connection with some discrete issue that's in front of me, but
14 I'm not going to require it in this context.

15 That brings me to old discovery issues, which were
16 in front of me by Hartford and Century, with respect to
17 discovery they wanted to take and Rule 2004 motions. And this
18 was back in, I want to say February, when I heard -- February
19 17th -- when I held some evidentiary hearings with respect to
20 discovery that Century and Chubb wanted to take related to
21 proofs of claim that had been filed.

22 And, again, I was sort of waiting to see where
23 we're going to end up and what's going to be relevant and I'm
24 still not necessarily positive because I don't know what plan
25 is going to be in front of me. But let me go ahead and rule

1 with respect to those requests.

2 The first was a Rule 2004 request to take discovery
3 of individual claimants. I believe this was Hartford's
4 motion, although, I think Century and Hartford were involved
5 in both; they were companion motions. And the real relevant
6 testimony we had was from Dr. Denise Neumann Martin and she,
7 her declaration was admitted and she was also subject to
8 direct and cross-examination. She was a managing director of
9 NERA Economic Consulting and she testified that she was
10 retained by Hartford to draw a sample of the sexual abuse
11 proofs of claim that could be examined further in discovery
12 and that would allow for statistically significant inferences
13 to be made about population parameters.

14 And she downloaded the survivor proofs of claim
15 forms from the claims agent's site. She removed duplicates
16 and she generated seven samples by randomly selecting 200
17 proofs of claim in six different subpopulations and a seventh
18 sample of the 200 from the remaining proofs of claim.

19 Counsel chose the six subpopulations, which were
20 alleged abuse in 1971 to 1975; no scouting affiliation; no
21 abuser identification; no physical abuse alleged; whether they
22 sought counseling or not; and no impact alleged.

23 Dr. Martin is not a subject-matter expert in the
24 area and she was very clear that she wasn't. And she wasn't
25 offered as one and she was very clear that she is not one.

1 She is a statistician who had been asked to design a proper
2 sample. She testified that once provided with data and
3 assigned characteristics to look for, she would be able to
4 measure with statistical precision whether the subpopulation
5 shared those characteristics, within a margin of error between
6 4 and 7 percent.

7 In no event, however, would she offer an opinion on
8 whether claimants sharing those characteristics had filed
9 valid or fraudulent sexual survivor proofs of claim, which was
10 the exercise we were involved in. At that time, and even now,
11 I'm denying the motion, because the record does not support a
12 conclusion that the requested discovery will yield meaningful
13 data and whether that data will permit the filing of omnibus
14 objections, which was the stated purpose.

15 I don't have any doubt that Dr. Martin created a
16 sample from which references that would carry statistically
17 significant weight, with respect to giving characteristics
18 could be drawn, but I had no evidence on the relevance of the
19 subpopulation's chosen by counsel or why these subpopulations
20 are worthy of examining or if that's the wrong question to
21 ask.

22 I have no evidence from Dr. Martin to explain why
23 the choice of subpopulations is important to the usefulness of
24 the exercise or is unimportant to the usefulness of the
25 exercise; in other words, why isn't it important to know why

1 these subpopulations were chosen and what they might relate
2 to.

3 Again, I'm skeptical that you could file omnibus
4 objections based on whatever might arise. And if it was going
5 to be used with respect to estimating aggregate abuse claims,
6 then it should be done in the context of that. We should have
7 discovery related to that and not sort of a one-off.

8 I will note, and I think I said this at one of the
9 previous hearings, that I had noted that one of the insurance
10 companies had also provided the declaration of David McKnight
11 from the Brattle Group, formerly of NERA, with respect to a
12 separate motion, and he suggests what I just said in my
13 ruling, which is that -- oh, this was with respect to the
14 debtors' motion to estimate; it's at Docket 3859-1 -- where he
15 says:

16 "The debtors have not defined what information or
17 statistics they hope to estimate from the proposed interests
18 and assume, without support, that a sample of less than .5
19 percent of the claims is large enough to make reliable
20 estimations for the universe of claims. The debtors have not
21 indicated by stratifying the claims by a statute of
22 limitations and the number of times the alleged abusers appear
23 in the proofs of claim will aid in claims estimation.

24 Well-designed sampling methodologies will involve
25 defining the population from which the random sample will be

1 drawn, identifying the statistics or characteristics that will
2 be estimated by the random sample, and choosing a targeted
3 range of uncertainty in the estimates."

4 So, I think he supports what I'm saying, which is
5 that I have no basis to know that six subpopulations chosen by
6 counsel will result in any characteristics that will be
7 helpful in evaluating anything that's in front of me, or
8 certainly generalizing, with respect to proofs of claim. So,
9 I'm denying it at this time.

10 There was a second request to take depositions of
11 law firms and/or aggregators. And with respect to that, I'm
12 going to permit the depositions of the aggregators that were
13 listed in the particular motion. I think the evidence that
14 was submitted raises concerns about how some of these claims
15 were generated and the recent declaration there Mr. Kosnoff
16 adds to that concern. So, at this time, I'm going to permit
17 that discovery.

18 I think that that discovery could be relevant to
19 voting and I think we need to get that underway, regardless of
20 the plan that's in front of me. So, we'll start with the
21 aggregators.

22 I'm not aware of any other discovery disputes that
23 are outstanding, but if there are any, I would like that
24 brought to attention of chambers so I can rule on it. And I
25 would ask the parties at the appropriate time, and assuming

1 that I don't have consensus, which, of course, I'm still
2 encouraging, to think about how discovery is going to be
3 conducted to promptly get us to a confirmation hearing. It's
4 not too early to give that thought.

5 That's all I have on discovery. Does anyone have
6 any questions on what I've ruled?

7 (No verbal response)

8 THE COURT: Okay. There was one other matter that
9 I raised, and we reached out to Ms. Veghte -- I don't know if
10 she's on the line today or not.

11 (No verbal response)

12 THE COURT: Okay. There was a notice of withdrawal
13 filed at Docket Number 5891, notice of withdrawal as counsel
14 for claimant number SA-59066.

15 Our rules, as I read them, does not permit counsel
16 to withdraw without permission from the Court. This is from
17 an individual claimant and this needs to be addressed. My
18 understanding is it may relate to Docket 5894, which was a
19 notice to the Court of abandonment by contracted counselors.

20 And I don't read this as consent by a client; I
21 read it as dissatisfaction with the response of, the
22 responsiveness of a claimant's counsel. I make no comment on
23 the validity of it; I just recognize it for what it is.

24 But counsel should recognize that I'm not
25 recognizing this notice of withdrawal as a withdrawal. You

1 still have a client. We'll contact Ms. Veghte, again, if
2 she's not on the call. I don't see her face.

3 Okay. I don't know if there are similar notices of
4 withdrawal. This is just one that I happened to see as I was
5 looking for something else. I don't troll the docket, so I
6 don't know of everything that is filed, but I will say this,
7 more generally, that is not a way to extricate oneself from
8 representation of a client.

9 That's all I have for today.

10 Is there anything that anyone else would like to
11 bring up?

12 (No verbal response)

13 THE COURT: Okay. Thank you.

14 I understand you're in mediation. Keep mediating.

15 We're adjourned.

16 COUNSEL: Thank you, Judge.

17 (Proceedings concluded at 3:21 p.m.)

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CERTIFICATE

We certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.

/s/Mary Zajackowski
Mary Zajackowski, CET**D-531

August 30, 2021

/s/William J. Garling
William J. Garling, CE/T 543

August 30, 2021